

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

IN RE:	§	
	§	CASE NO: 12-30834
JUAN ANTONIO VASQUEZ; fdba	§	CHAPTER 13
JUANITOS 2000 NIGHT CLUB; dba EL	§	
MISMO SPORTS BAR	§	
	§	
Debtor(s).	§	DAVID R. JONES

MEMORANDUM OPINION
(Docket No. 49)

On August 20, 2012, the Court held a continued hearing to consider confirmation of the Debtor's proposed Fourth Amended Chapter 13 Plan (the "Plan"). The sole remaining objection is that advocated by GMAC Mortgage, LLC in its capacity as servicer for Deutsche Bank Trust Company Americas as Trustee for RALI 2006-QS6 ("GMAC"). GMAC asserts that the Plan's proposed interest rate of 4.25% to be paid on its claim is too low¹ and requests that the interest rate be raised to 5.25% consistent with the practice in this district. For the reasons set forth below, the Court overrules GMAC's objection and confirms the Plan. A separate order will issue.

Procedural Background

1. Juan Antonio Vasquez filed this chapter 13 case on February 4, 2012. The Debtor filed his initial chapter 13 plan on February 28, 2012. [Docket No. 18]. The Debtor filed his First Amended Plan on March 7, 2012.

2. On April 13, 2012, Deutsche Bank Trust Company Americas as Trustee for RALI 2006-QS6 ("Deutsche") filed an objection to the Debtor's First Amended Plan Docket No. 33]. In its objection, Deutsche asserted that (i) the plan incorrectly set forth the amount of its pre-petition arrearage claim; and (ii) the proposed interest rate was not the contract rate or the "interest rate specified in this district." Deutsche filed a second objection later the same day, asserting that (i) the amount of its total claim was understated; (ii) the proposed interest rate was not the contract interest rate; and (iii) the Plan failed to provide for the payment of taxes and insurance during the plan's term [Docket No. 34].

3. In an attempt to resolve Deutsche's objections as well as several other issues raised by the chapter 13 trustee, the Debtor filed his second amended plan on June 15, 2012 [Docket No. 40]. A third amended plan was filed on July 11, 2012 [Docket No. 16] and a fourth amended plan on July 26, 2012 [Docket No. 49].

¹ GMAC's objection that the proposed interest rate is too low is considered by the Court to be an objection to confirmation under 11 U.S.C. § 1325(a)(5)(B).

4. The Court held an initial hearing on confirmation of the Debtor's proposed plan on April 23, 2012 [Docket No. 35]. GMAC appeared at the hearing in its capacity as servicer for Deutsche. At the request of the parties, the Court continued the hearing to June 18, 2012 [Docket No. 41], then to July 30, 2012 [Docket No. 50] and finally to August 20, 2012 [Docket No. 2012].

The GMAC/Deutsche Claim

5. On April 4, 2004, the Debtor executed a promissory note in the principal amount of \$69,600 secured by a deed of trust on real property located at 2242 Rainbow Drive, Houston TX 77023 (the 'Collateral'). The note bears interest at the rate of 5.375% and has a final maturity date of May 1, 2014. The Collateral is not the Debtor's principal residence. On the petition date, the balanced owed to Deutsche was \$29,167.92 (the "GMAC Claim"). The Debtor's Schedule A lists the Collateral as having a value of \$86,210. No party disputes the Debtor's valuation.

The Plan

6. Under the Fourth Amended Plan, the Debtor proposes to pay the GMAC Claim in full over 50 months with interest at the rate of \$4.25%.

Confirmation

7. At the August 20, 2012 confirmation hearing, the parties agreed that the sole unresolved issue was the appropriate rate of interest to be paid on the GMAC Claim. The parties further agreed that the answer to this question is governed by the Supreme Court's decision in *Till v. SCS Credit Corp.*, 541 U.S. 465 (2004).

8. The Debtor asserts that given the totality of the circumstances, the proposed interest rate of 4.25% is sufficient under *Till*. GMAC asserts that Mr. Vasquez would be unable to obtain new financing at the proposed rate. GMAC further asserts that the best rates available are 3.6 to 4% and that because the debtor is in bankruptcy and has made two NSF payments to the chapter 13 trustee, the equities in the case mandate a significantly higher risk premium. GMAC states that it would accept an interest rate of 5.25% in this case.

Analysis

9. The Court has jurisdiction over this contested matter pursuant to 11 U.S.C. § 1334. The confirmation of a plan is a core proceeding under 28 U.S.C. 157(b)(2)(L). The Court has constitutional authority to enter a final order.

10. The Court first wishes to dispel the notion that there exists "a specified interest rate in this district." The Court is aware of prior decisions within this district referencing a plan interest rate of 5.25%.² Those decisions have apparently given rise to a presumption among practitioners that a standard interest rate in chapter 13 plans has been established in this district.

² The first decision that could be located was Judge Isgur's unpublished decision in *In re: Montemayor*, Case No. 10-36990, Docket No. 50, December 20, 2012. Judge Isgur's order was widely discussed in several blogs and seminars as setting an interest rate for chapter 13 plans in the Southern District of Texas.

However, no such standard rate exists.³ An appropriate interest rate must be based on a review of a myriad of economic and other factors such as U.S. Treasury and other commercial interest rates and the quality and extent of a secured creditor's collateral. Other factors, too numerous to list, may positively or negatively affect the proper interest rate to be applied in a given case.

11. In this case, the Court's focus is very narrow—Does the Fourth Amended Plan's proposed interest rate meet the requirements of 11 U.S.C. § 1325(a)(5)(B)? In *Till*, the Supreme Court proscribed the method of determining the proper calculation of the “present value” of secured debt under 11 U.S.C. § 1325(a)(5)(B). See *Till v. SCS Credit Corp.*, 541 U.S. 465 (2004). The present value of a claim is a financial concept that is dependent upon the selection of an appropriate interest rate. To calculate an appropriate interest rate under a chapter 13 plan, one must start with the yield on a “risk free” five-year investment. In the words of the Fifth Circuit, the five-year treasury rate “includes all necessary factors except the risk premium.” *In re Briscoe Enters., Ltd. II*, 994 F.2d 1160, 1169 (5th Cir. 1993). On August 20, 2012, the yield on a five-year treasury instrument was .80%. Accordingly, the risk premium associated with the interest rate proposed by the Debtor under the Plan is 3.45%.

12. It is uncontroverted that the GMAC Claim is significantly oversecured by real estate. The entirety of the GMAC Claim is to be paid within the Plan's term. The Court finds that such a risk premium is within the bounds of reason. GMAC's argument that the Debtor could not get a loan under similar terms at such a rate is unavailing. Put practically, there is no genuine market for financing chapter 13 plans. If GMAC wishes to discuss the theoretical, the Court notes that the current rate for a seven-to-ten year mortgage is less than the rate proposed by the Debtor.

13. The Court acknowledges that a mathematical analysis of real world events is never perfect and cannot encompass every possible issue that might arise in the future. However, based on the available evidence, the Court finds that the proposed interest rate of 4.25% to be paid by the Debtor on the GMAC claim is not unreasonable and complies with *Till*. GMAC's objection is overruled. The Debtor has satisfied the requirements of 11 U.S.C. § 1325 and the Fourth Amended Plan is confirmed. A separate order will issue.

SIGNED: August 29, 2012.


DAVID R. JONES
UNITED STATES BANKRUPTCY JUDGE

³ The Court does not mean to suggest that 5.25% is not an appropriate interest rate. Interest rates are, however, akin to ocean tides—they rise and fall, driven by a multitude of external forces.